Abdulloh Saofi v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO D-05–286 OF 2010
ABDUL MALIK ISHAK, AZAHAR MOHAMED AND BALIA YUSOF JJCA
16 JANUARY 2013

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Criminal Procedure — Appeal — Appeal against conviction and sentence — Trafficking in 76.39g of methamphetamine — Arrest based on aid of agent provocateur and informer — Whether accused had prerequisite knowledge about dangerous drugs — Whether trial judge undertook maximum evaluation of prosecution case when deciding to call accused to enter defence — Dangerous Drugs Act 1952 s 39B(1)(a) & (2)

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Evidence — Informer — Failure to call informer as witness — Whether informer played an active role — Whether role played by informer exceeded designated role — Whether informer entitled to statutory protection under s 40(1) of the Dangerous Drugs Act 1952 — Whether adverse inference under s 114(g) of the Evidence Act 1950 should be invoked against prosecution for non-calling of informer

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With the aid of an informer, the prosecution had used an agent provocateur, S/I Busra bin Abdul Kadir ('PW11') who posed as a drug purchaser to prove direct trafficking of dangerous drugs. PW11, along with the informer, met the appellant where PW11 told the appellant that he wanted to purchase pil kuda from the appellant. The appellant then agreed to sell three tongkol pil kuda for RM93,000. On the day when the transaction was supposed to take place, the appellant brought with him a plastic bag and handed it over to PW11. '1 kotak Appolo Pandan Kek Lapis' and a 'kuaci' plastic was found inside and upon examination, PW11 could feel pills inside the packages. On the pretext of trying to get money, PW11 handed the plastic bag back to the appellant and signaled the raiding team. This led to the arrest of the appellant. A chemist report later confirmed that the pills were indeed 76.39g of methamphetamine. PW11's evidence was corroborated by Inspector Mahendra Seelan a/l Sahiyea ('PW7'). The appellant was convicted and sentenced to death at the High Court for trafficking in 76.39g of methamphetamine, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'), and punishable under s 39B(2) of the DDA. Aggrieved, the appellant filed the present appeal and raised five main grounds: (i) the role played by the informer exceeded his role as an informer and this disentitled him to the statutory protection under s 40(1) of the DDA; (ii) the appellant had no prerequisite knowledge about the

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dangerous drugs found in the plastic bag at the material time; (iii) the learned trial judge failed to undertake a maximum evaluation of the prosecution case when deciding to call on the appellant to enter upon his defence; (iv) the absence of finger print evidence to show the physical nexus between the appellant and the offending exhibits; and (v) the police report lodged by PW7 did not mention the role played by PW11 in this case.

Held, dismissing the appeal:

(1) Whether a person is an informer or has become an active agent provocateur depends on the facts of each particular case. From the evidence, it was clear that the informer's role was to introduce the appellant to SP11 a week before the incident. The informer was not even present during the meeting where the drugs were handed by the appellant to PW11 over a week later. The informer did not play an active role and therefore need not be called as a witness. For that reason, the informer was not an agent provocateur. The non-calling of the informer did not cause any gap in the prosecution's case. Hence, adverse inference under s 114(g) of the Evidence Act 1950 cannot be invoked against the prosecution for the non-calling of the informer (see paras 11–12).

(2) The prosecution founded its case on the sale by the appellant of the methamphetamine to PW11, an agent provocateur. There was more than sufficient admissible evidence to support the learned trial judge's finding that the appellant was selling the dangerous drugs to PW11. Having regard to the surrounding circumstances of the present case, the transfer of the dangerous drugs to PW11 had been completed at the point when the appellant handed over the plastic bag containing the offending exhibits to PW11. At that point of time, there had been an actual delivery of the dangerous drugs to PW11 although it was not accompanied by the physical handing over of the agreed purchase money. It is relevant to note that earlier PW11 had showed the appellant the purchase money. A sale is complete upon the delivery of the property in the goods though the price has not been paid. On the facts of the present case, the learned trial judge was entitled and correct in making a finding that the appellant was selling the dangerous drugs to PW11 (see para 13).

(3) A reading of the judgment revealed that the learned trial judge had given his reasons for requiring the appellant to make his defence. In this way he had undertaken a maximum evaluation of the prosecution case. The learned judge had directed and addressed his mind to all the critical issues and arrived at the above conclusion after considering all the relevant evidence and case law authorities. The learned trial judge had taken into account all the relevant considerations without misdirecting himself (see paras 15–17).

(4) In this case, finger print evidence assumed little significance because the

prosecution had founded its case of trafficking on the sale of the dangerous drugs to PW11 and that the identity of the appellant as the person who sold the drugs to PW11 was never in doubt. The submission of learned counsel could not, for that reason, be sustained (see para 18).

(5) A police report is not an encyclopedia. It can never be treated as a piece of substantive evidence. It is not the beginning and ending of every case. In the context of the present case, what was most important was the testimony of PW11 in court on what he heard and saw and the findings of the learned trial judge on the credibility of PW11 and the inherent probability of his testimony (see para 19).

[Bahasa Malaysia summary

Dengan bantuan seorang pemberi maklumat, pendakwa raya telah menggunakan seorang ejen provokasi, S/I Busra bin Abdul Kadir ('PW11') yang menyamar sebagai pembeli dadah untuk membuktikan pengedaran dadah berbahaya secara langsung. PW11, bersama dengan pemberi maklumat, berjumpa dengan perayu di mana PW11 memberitahu perayu bahawa dia mahu membeli pil kuda daripada perayu. Perayu kemudiannya bersetuju untuk menjual tiga tongkol pil kuda berharga RM93,000. Pada hari transaksi tersebut mengambil tempat, perayu membawa satu beg plastik bersamanya dan menyerahkannya kepada PW11. '1 kotak Appolo Pandan Kek Lapis' dan satu plastik 'kuaci' ditemui di dalamnya dan selepas diperiksa, PW11 dapat merasakan pil-pil yang berada di dalam bungkusan tersebut. Dengan menggunakan alasan untuk mendapatkan wang, PW11 menyerahkan semula beg plastik tersebut kepada perayu dan memberi isyarat kepada pasukan serbuan. Ini membawa kepada penangkapan perayu. Laporan ahli kimia kemudiannya mengesahkan bahawa pil-pil tersebut sememangnya 76.39g methamphetamine. Keterangan PW11 disokong oleh Inspektor Mahendra Seelan a/l Sahiyea ('PW7'). Perayu disabitkan dan dijatuhi hukuman mati di Mahkamah Tinggi kerana mengedar 76.39g methamphetamine, satu kesalahan di bawah s 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'), dan boleh dihukum di bawah s 39B(2) ADB. Terkilan, perayu memfailkan rayuan ini dan mengemukakan lima alasan utama: (i) watak yang dimainkan oleh pemberi maklumat telah melebihi wataknya sebagai seorang pemberi maklumat dan ini tidak memberikannya hak untuk perlindungan statutori di bawah s 40(1) ADB; (ii) perayu tidak dari awal mengetahui mengenai dadah berbahaya yang ditemui di dalam beg plastik pada masa material; (iii) hakim perbicaraan yang bijaksana terkhilaf untuk menjalankan penilaian maksimum kes pendakwaan apabila beliau memutuskan untuk memanggil perayu untuk memasukkan pembelaannya; (iv) ketiadaan keterangan cap jari untuk menunjukkan pertalian fizikal di antara perayu dan ekshibit-ekshibit kesalahan; dan (v) laporan polis yang dibuat oleh PW7 tidak menyatakan watak yang dimainkan oleh PW11 dalam kes ini.

Diputuskan, menolak rayuan:

(1) Sama ada seseorang itu merupakan pemberi maklumat atau telah

menjadi seorang ejen provokasi yang aktif bergantung kepada fakta-fakta setiap kes tertentu. Daripada keterangan, jelas bahawa watak pemberi maklumat ialah untuk memperkenalkan perayu kepada SP11 seminggu sebelum insiden. Malah, perayu tidak hadir semasa perjumpaan di mana dadah diberikan oleh perayu kepada PW11 selepas seminggu kemudian. Pemberi maklumat tidak memainkan watak aktif dan oleh itu tidak perlu dipanggil sebagai seorang saksi. Atas sebab itu, pemberi maklumat bukan merupakan seorang ejen provokasi. Tidak memanggil pemberi maklumat tidak akan menyebabkan sebarang jurang dalam kes pendakwaan. Oleh itu, anggapan berlawanan di bawah s 114(g) Akta Keterangan 1950 tidak boleh digunakan terhadap pendakwa raya kerana tidak memanggil pemberi maklumat (lihat perenggan 11–12).

(2) Pendakwa raya mengasaskan kesnya berdasarkan jualan methamphetamine oleh perayu kepada PW11, seorang ejen provokasi. Terdapat keterangan boleh terima yang lebih daripada mencukupi untuk menyokong dapatan hakim perbicaraan bahawa perayu menjual dadah berbahaya kepada PW11. Dengan mengambil kira keadaan persekitaran kes ini, pemindahan dadah berbahaya kepada PW11 telah disempurnakan pada masa perayu menyerahkan beg plastik yang mengandungi ekshibit-ekshibit kesalahan kepada PW11. Pada masa tersebut, terdapat penghantaran sebenar dadah berbahaya kepada PW11 walaupun ia tidak disertai dengan penyerahan fizikal wang belian seperti yang dipersetujui. Adalah relevan untuk mengambil kira bahawa PW11 telah menunjukkan wang belian terlebih dahulu kepada perayu. Satu jualan telah disempurnakan selepas penghantaran barang tersebut walaupun harga belum lagi dibayar. Berdasarkan fakta-fakta kes ini, hakim bicara yang bijaksana berhak dan benar dalam membuat dapatan bahawa perayu telah menjual dadah berbahaya kepada PW11 (lihat perenggan 13).

(3) Bacaan pada penghakiman menunjukkan bahawa hakim bicara yang bijaksana telah memberikan alasan-alasan beliau yang memerlukan perayu untuk membela diri. Dengan cara ini beliau telah menjalankan satu penilaian maksimum kes pendakwaan. Hakim yang bijaksana telah mengarahkan dan memfokuskan mindanya kepada semua isu kritikal dan telah membuat kesimpulan seperti yang dinyatakan di atas selepas mempertimbangkan semua keterangan relevan dan autoriti-autoriti kes undang-undang (lihat perenggan 15–17).

(4) Dalam kes ini, keterangan cap jari berkepentingan kecil kerana pendakwa raya telah mengasaskan kes pengedarannya pada jualan dadah berbahaya kepada PW11 dan bahawa identiti perayu sebagai orang yang menjual dadah-dadah kepada PW11 tidak pernah diragukan. Hujahan peguam bela yang bijaksana tidak boleh dikekalkan atas alasan tersebut. (lihat perenggan 18).

(5) Laporan polis bukanlah satu ensiklopedia. Laporan tersebut tidak boleh dianggap sebagai keterangan substantif. Ia bukan merupakan permulaan dan pengakhiran setiap kes. Dalam kes-kes ini, apa yang paling penting ialah keterangan PW11 di mahkamah mengenai apa yang didengari dan dilihatnya dan dapatan hakim bicara yang bijaksana mengenai kredibiliti PW11 dan kebarangkalian bahawa keterangannya wujud (lihat perenggan 19).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 216–222.

For cases on failure to call informer as witness, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 2131–2132.

Cases referred to

Balachandran v PP [2005] 2 MLJ 301; [2005] 1 AMR 321, FC (refd)

Herchun Singh & Ors v PP [1969] 2 MLJ 209; [1969] 1 LNS 52, FC (refd)

Jeva a/l Subramaniam & Anor v PP [2008] MLJU 674; [2009] 3 CLJ 597, CA (refd)

Munusamy v PP [1987] 1 MLJ 492, SC (refd)

Pendakwa Raya v Mansor bin Mohd Rashid & Anor [1996] 3 MLJ 560; [1997] 1 CLJ 223, FC (refd)

PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2006] 1 CLJ 457, FC (refd)

PP v Sa'ari bin Jusoh [2007] 2 MLJ 409; [2007] 2 CLJ 197, FC (refd)

Wan Yurillhami bin Wan Yaacob & Anor v PP [2010] 1 MLJ 749; [2010] 1 CLJ 17, FC (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 39B(1)(a), (2), 40(1)

Evidence Act 1950 s 114(g)

Appeal From: Criminal Trial No 45-11 of 2007 (High Court, Kota Bharu)

Bernard George a/l George Mathews (Tay, Bernard & Cheong) for the appellant.
Shoba Venu Gobal (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Azahar Mohamed JCA (delivering judgment of the court):

[1] Mr Abdulloh Saofi ('the appellant') was charged and tried before the Kota Bharu High Court for trafficking in 76.39g of dangerous drugs, namely methamphetamine, an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'), and punishable under s 39B(2) of the DDA. The offence was

said to have been committed on 15 December 2006 at about 7.10pm at Stesen Minyak Caltex, Jalan Pasir Mas-Rantau Panjang, in the district of Pasir Mas, in the State of Kelantan. The appellant's wife, Yanidah Maerohkachi was charged for abetting the offence.

[2] Both the appellant and his wife were tried together at one trial before the learned High Court judge. At the conclusion of the trial, the learned trial judge acquitted and discharged Yanidah Maerohkachi, while the appellant was convicted and sentenced to the mandatory death penalty prescribed by the DDA. Aggrieved by that decision, the appellant then appealed to this court. This appeal concerned only the appellant. We heard his appeal, wherein at its conclusion we unanimously dismissed it. We affirmed the conviction and sentence. We now give our reasons for so deciding.

[3] The salient facts adduced by the prosecution at the trial are these. This was a case where the prosecution had used an agent provocateur, S/I Busra bin Abdul Kadir ('PW11') to prove direct trafficking of dangerous drugs. The evidence as unfolded revealed that pursuant to an arrangement by an informer, PW11 who posed as a drug purchaser from Kuala Lumpur met the appellant together with the informer on 8 December 2006 in Rantau Panjang. PW11 told the appellant that he wanted to buy *pil kuda* from the appellant. The appellant agreed to sell to PW11 three 'tongkol' *pil kuda* at a price of RM93,000. PW11 and the appellant then exchanged telephone numbers.

[4] On 15 December 2006 at about 10am, PW11 met the appellant at a food stall located at the Rantau Panjang town. The appellant told PW11 that he had the drugs in his possession. PW11 then tried to get the price to be reduced but the appellant did not agree. The appellant then told PW11 to meet him again later in the day at the same place where the drugs were supposed to be delivered. At about 4pm, the appellant called PW11 and informed him to get the drugs at the designated location.

[5] At about 6.55pm, PW11 proceeded to the location and parked his car at the Caltex petrol station in Rantau Panjang and walked across to the bus/taxi station. When he arrived at the bus station, he saw the appellant with a child facing the road. They met and agreed to meet at the Caltex station. In this regard, the following is what PW11 said in his testimony about his discussion with the appellant at that point of time, at p 281 of the appeal record:

> Sebaik sampai saya berjumpa dengan Lah, saya minta maaf kepada Lah kerana lambat. Kemudian saya tanya Lah mana pil-pil kuda yang dijanjikan? Lah jawab ada dengan isterinya. Kemudian Lah tanya saya adakah duit RM93 ribu saya bawa. Saya jawab ada dalam kereta saya yang saya parking di stesen minyak Caltex. Kalau nak tengok, saya boleh ambil. Lah beritahu saya tidak usah dan minta saya tunggu di kereta saya sementara dia datang dengan isterinya ke stesen minyak Caltex tersebut.

[6] Continuing with his evidence at pp 281–282 of the appeal record, the material part of the evidence of PW11 is as follows:

> Tidak lama kemudian saya nampak Lah pandu kereta yang sama 5269 yang dinaiki oleh seorang perempuan dan 2 orang kanak-kanak masuk ke kawasan stesen minyak Caltex melalui hadapan stesen minyak Caltex tersebut dan memberhentikan kereta itu di depan surau yang terletak di stesen minyak itu. Kemudian saya nampak Lah seorang diri berjalan kaki dan arah belakang stesen minyak Caltex menemui saya berdiri di depan kereta WBS 9268. Sebaik berjumpa saya, Lah tanya saya mana duit dia nak tengok. Saya membuka pintu kereta saya dan mengeluarkan 1 beg dari bawah tempat duduk pemandu dan menunjukkan Lah isi kandungan beg tersebut 4 ikatan not 100 dan 50. Kemudian saya simpan semula beg itu ke dalam kereta dan beritahu Lah saya hanya akan serah duit bila tengok pil kuda yang dijanjikan. Tidak lama kemudian, saya nampak seorang perempuan yang sama dengan 2 orang kanak-kanak datang dan arah belakang stesen minyak Caltex itu sambil membawa 1 plastik beg dan kemudian menyerahkannya kepada Lah di kaki lima sebelah tandas stesen minyak Caltex tersebut.

[7] The appellant then handed over the plastic bag to PW11. PW11 opened the plastic bag and found '1 kotak Appolo Pandan Kek Lapis' and a 'kuaci' plastic. Upon examination, PW11 could feel pills inside the packages. He handed the plastic bag back to the appellant and said that he was going to get the money. PW11 then gave a pre-arranged signal to the raiding team. Both the appellant and his wife were ambushed and arrested.

[8] Later, upon examining the plastic bag, PW11 discovered that it contained a number of pills suspected to be drugs. These pills were subsequently sent to the chemist, Puan Zainun bt Mohamad ('PW1') for analysis who confirmed that the pills contained 76.39g of methamphetamine.

[9] Inspector Mahendra Seelan a/l Sahiyea ('PW7') corroborated the evidence of PW11 regarding the undercover operation and the subsequent detention of the appellant as well as the seizure of the offending exhibits.

[10] When this appeal came before us, learned counsel for the appellant raised five principal grounds in support of the appellant's appeal.

[11] On the first ground, learned counsel argued that the informer had not only introduced PW11 to the appellant but had taken an active part in the sale transaction of the dangerous drugs in question. According to learned counsel, the role played by the informer was more than that of an informer and disentitled him to the statutory protection under s 40(1) of the DDA. In our view, this contention was not well-founded. Whether a person is an informer or has become an active agent provocateur depends on the facts of each particular case (see *Pendakwa Raya v Mansor bin Mohd Rashid & Anor* [1996] 3 MLJ 560;

A [1997] 1 CLJ 223 and *Munusamy v Public Prosecutor* [1987] 1 MLJ 492). If a person is only an informer, the prosecution is not required to call him as a witness or offer him to the defence (see *Wan Yurillhami bin Wan Yaacob & Anor v Public Prosecutor* [2010] 1 MLJ 749; [2010] 1 CLJ 17).

B **[12]** From the evidence, it is clear that the informer's role was to introduce the appellant to SP11 a week before the incident. The informer was not even present during the meeting where the drugs were handed by the appellant to PW11 over a week later. The informer did not play an active role and therefore need not be called as a witness. For that reason, the informer was not an agent provocateur. The non-calling of the informer did not cause any gap in the prosecution's case. Hence, adverse inference under s 114(g) of the Evidence Act 1950 cannot be invoked against the prosecution for the non-calling of the informer.

D **[13]** We now come to the second ground. It was argued that the appellant had no prerequisite knowledge about the dangerous drugs found in the plastic bag at the material time. We saw no merit in this submission. It is an important point to bear in mind that the prosecution founded its case on the sale by the E appellant of the methamphetamine to PW11, an agent provocateur. In the present case there was more than sufficient admissible evidence to support the learned trial judge's finding that the appellant was selling the dangerous drugs to PW11 (see: grounds of judgment at p 387 of the appeal record). In our judgment, having regard to the surrounding circumstances of the present case, F the transfer of the dangerous drugs to PW11 had been completed at the point when the appellant handed over the plastic bag containing the offending exhibits to PW11. At that point of time, there had been an actual delivery of the dangerous drugs to PW11 although it was not accompanied by the physical handing over of the agreed purchase money. It is relevant to note that earlier G PW11 had showed the appellant the purchase money. A sale is complete upon the delivery of the property in the goods though the price has not been paid (see *Public Prosecutor v Sa'ari bin Jusoh* [2007] 2 MLJ 409; [2007] 2 CLJ 197 and *Jeva a/l Subramaniam & Anor v Public Prosecutor* [2008] MLJU 674; [2009] 3 CLJ 597). On the facts of the present case, in our view, the learned trial judge H was entitled and correct in making a finding that the appellant was selling the dangerous drugs to PW11.

[14] Further on the issue of knowledge, the learned trial judge, after carefully I reviewing the evidence, made specific findings concerning this issue as follows (see p 390 of the appeal record):

> Jelas tertuduh mempunyai pengetahuan berdasarkan keterangan yang dikemukakan. Barang itu dibekalkan oleh tertuduh kepada SP11. Begitu juga dengan tindak-tanduk isteri tertuduh membawa barang itu dan menyerahkannya

kepada tertuduh jelas menunjukkan dia juga mempunyai pengetahuan mengenai barang itu. Kedua-dua mereka mempunyai kawalan dan jagaan ke atas dadah yang dirampas itu.

[15] Turning now to the third ground, it was argued that the learned trial judge failed to undertake a maximum evaluation of the prosecution case when deciding to call on the appellant to enter upon his defence. In the case of *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457, the Federal Court held that this undertaking involves an assessment of the credibility of the witnesses called by the prosecution and the drawing of inferences admitted by the prosecution evidence. Thus, if the prosecution's evidence admits of two or more inferences, one of which is in the accused's favour, then it is the duty of the court to draw the inference that is favourable to the accused. In considering this issue, we had scrutinised the judgment of the learned trial. In this regard, we recognise that a judgment is the expression of the opinion of a judge arrived at after due deliberation of the evidence and of the submissions advanced before him. Each judge has an individual manner or style of expression. That is why, what is most important is whether or not in substance and effect the learned trial judge in his judgment had subjected the evidence led by the prosecution in its totality to a maximum evaluation. A reading of the judgment revealed that the learned trial judge had given his reasons for requiring the appellant to make his defence. In this way he had undertaken a maximum evaluation of the prosecution case. In the words of the learned trial judge (see pp 387–388 of the appeal record):

Dalam kes ini tertuduh berunding untuk menjual dadah tersebut kepada SP11. Tertuduh telah membekalkan dadah kepada SP11. Dalam kes Mahkamah Persekutuan *PP v Sa'ari bin Jusoh* [2007] 2 MLJ 409 memutuskan bahawa 'the act of selling takes place once goods are transferred or delivered eventhough the price has not been paid'. Mengenai SP11 seorang penyamar sulit polis (agen provocateur) keterangan beliau boleh diterima dan berdiri sendiri. Ia tidak memerlukan sokongan seperti yang diputuskan oleh kes *Mahkamah Agung Namasiyiam v PP* [1987] 2 MLJ 336. Keterangannya dilindungi oleh s 40A(1) dan s 40A(2) ADB.

[16] The learned trial judge then concluded as follows (see pp 390–391 of the appeal record):

Berdasarkan keterangan yang dikemukakan dan bawah s 180 Kanun Acara Jenayah Mahkamah memutuskan terdapat kes prima facie dibuktikan oleh pendakwaan terhadap kedua-dua tertuduh dan isterinya. Oleh itu Mahkamah memanggil tertuduh dan isterinya membela diri. Tertuduh dan isterinya memilih memberi keterangan secara bersumpah.

[17] In our judgment, the learned judge had directed and addressed his mind to all the critical issues and arrived at the above conclusion after considering all

A the relevant evidence and case law authorities. The learned trial judge had taken into account all the relevant considerations without misdirecting himself.

[18] We turn next to the fourth ground raised by learned counsel for the appellant. That is, the absence of finger print evidence to show the physical
B nexus between the appellant and the offending exhibits. We agreed with the submissions of the learned deputy public prosecutor that in this case finger print evidence assumed little significance because the prosecution had founded its case of trafficking on the sale of the dangerous drugs to PW11 and that the identity of the appellant as the person who sold the drugs to PW11 was never
C in doubt (see *Pendakwa Raya v Mansor bin Mohd Rashid & Anor*). The submission of learned counsel cannot for that reason be sustained.

[19] Finally, learned counsel complained that the police report (exh P32) lodged by PW7 did not mention the role played by PW11 in this case. We
D found no merit in this complaint. A police report is not an encyclopedia. It can never be treated as a piece of substantive evidence. It is not the beginning and ending of every case (see *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209; [1969] 1 LNS 52 and *Balachandran v Public Prosecutor* [2005] 2 MLJ 301; [2005] 1 AMR 321). In the context of the present case, what is most
E important is the testimony of PW11 in court on what he heard and saw and the findings of the learned trial judge on the credibility of PW11 and the inherent probability of his testimony.

[20] We had scrutinised the entire evidence in the appeal record and the
F judgment of the learned trial judge in the light of the various criticisms made by learned counsel for the appellant. We found that the learned trial judge had not misdirected himself on facts and law. The decision of the learned trial judge was neither perverse nor against the weight of evidence. We found the conviction of
G the appellant safe. We had, therefore, dismissed the appeal. We affirmed the conviction and the sentence of death imposed by the learned trial judge upon the appellant.

Appeal Dismissed.

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Reported by Afiq Mohamad Noor

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